



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,243	08/22/2003	Gust H. Bardy	020.0341.US.CON	9401

49475 7590 12/01/2006

CASCADIA INTELLECTUAL PROPERTY  
500 UNION STREET  
STE.1005  
SEATTLE, WA 98101

EXAMINER

NATNITHITHADHA, NAVIN

ART UNIT PAPER NUMBER

3735

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/646,243

Applicant(s)

BARDY, GUST H.

Examiner

Navin Natnithithadha

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) 31-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
:20030822;20030926;20031215;20040318;20040430;20050411;20050726;20050919;20060717;20060808.  
20030926

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 31-81 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 28 September 2006.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5-12, 14-23, and 25-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Krausman et al, US 6,306,088 B1 ("Krausman").

Claims 1-11, 23, and 25-30: Krausman teaches a system or computer-readable storage medium holding code for diagnosing and monitoring respiratory insufficiency or distress (apnea or hypopnea, see col. 9, ll. 50-62), comprising: an external medical device 11 (see col. 4, ll. 36-45); a database module (FLASH memory) 15 for storing or retrieving/obtaining monitoring sets and reference baseline (see col. 4, ll. 45-55, and

Art Unit: 3735

col. 10, ll. 1-21); a server (external computer) 17, comprising: a comparison module 17 determining a patient status change by comparing at least one recorded quality of life measure, i.e. respiratory rate (airflow or respiratory effort, see col. 9, l. 54), from each of the monitoring sets to at least one other recorded quality of life measure with both recorded measures relating to a same type of patient information (see col. 10, ll. 1-65, and claim 2), and an analysis module 17 testing each patient status change against an indicator threshold corresponding to the same type of patient information as the recorded measures which were compared, the indicator threshold corresponding to a quantifiable physiological measure of a pathophysiology indicative of respiratory insufficiency or distress (see col. 10, ll. 1-65, and claim 2); and a set of stickiness indicators for each type of patient information, each stickiness indicator corresponding to a temporal limit related to a program of patient diagnosis or treatment (adaptive-threshold scheme based on an adaptive period, see col. 10, ll. 29-41).

Claims 12 and 14-22: Krausman teaches the corresponding method of performing the functions of the above system or computer-readable storage medium, and thus, Krausman anticipates the subject matter of these claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 13, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krausman, as applied to claims 1, 12, and 23 above, and further in view of over Berthon-Jones, US 5,704,345 A ("Berthon-Jones").

Claims 2, 13, and 24: Krausman does not teach the subject matter of these claims. However, Berthon-Jones teaches an analysis module 62 managing the respiratory insufficiency and outcomes thereof (apnea, see col. 2, ll. 48-50) through administration of mechanical therapies (commencing continuous or increasing CPAP treatment, see col. 2, ll. 40-60). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Krausman's analysis module 17 to manage apnea through a CPAP treatment apparatus as taught by Berthon-Jones because both Krausman and Berthon-Jones teach determining apnea based on measured respiratory air flow. In addition, Berthon-Jones suggests the advantage of using the determination of apnea to control administration of CPAP treatment (see col. 2, ll. 56-60).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

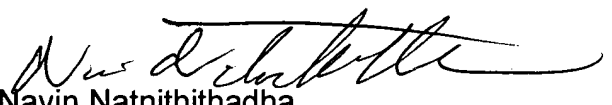
US 4,197,856 A teaches subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

Art Unit: 3735

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Navin Natnithithadha  
Patent Examiner  
Art Unit 3735  
09/27/2006